

FIRST REGULAR SESSION

SENATE BILL NO. 438

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DEMPSEY.

Read 1st time February 12, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2127S.01I

AN ACT

To repeal sections 92.074, 92.077, 92.080, 92.083, 92.086, 92.089, and 92.092, RSMo, and to enact in lieu thereof four new sections relating to wireless telecommunications services taxes.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 92.074, 92.077, 92.080, 92.083, 92.086, 92.089, and 92.092, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 92.077, 92.080, 92.083, and 92.086, to read as follows:

92.077. 1. Sections 92.077 to 92.086 shall be known and may be cited as the "Municipal Telecommunications Business License Tax Modernization Act".

2. As used in sections [92.074] 92.077 to [92.095] 92.086, unless the context clearly requires otherwise, the following terms mean:

(1) "Business license tax", any tax, including any fee, charge, or assessment in the nature of a tax, assessed by a municipality on a telecommunications company for the privilege of doing business within the borders of such municipality, and specifically includes any tax assessed on a telecommunications company by a municipality under section 66.300 and section 80.090, section 92.073, section 94.110, 94.270, or 94.360, or under authority granted in its charter, as well as an occupation license tax, gross receipts tax, franchise tax, or similar tax, but shall not include:

(a) Any state or municipal sales tax imposed under sections 144.010 to 144.525; or

(b) Any municipal right-of-way usage fee imposed under the authority of a municipality's police powers under Section 253(c) of the Federal

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 Telecommunications Act of 1996 (**47 U.S.C. Section 253(c)**), as amended, or
19 under sections 67.1830 to 67.1846; or

20 (c) Any tax or fee levied for emergency services under section 190.292,
21 190.305, 190.325, 190.335, or 190.430, or any tax authorized by the general
22 assembly after August 28, 2005, for emergency services;

23 (d) Any flat tax duly imposed on or before August 28, [2005] **2015**;

24 (2) ["Director", the director of the department of revenue;

25 (3)] "Municipal", of or relating to a municipality;

26 [(4)] **(3)** "Municipality", any city, county, town, or village in Missouri
27 entitled by authority of section 66.300, section 80.090, section 92.073, section
28 94.110, 94.270, or 94.360, or under authority granted in its charter to assess a
29 business license tax on telecommunications companies;

30 **(4) "Prepaid wireless telecommunications service", a wireless**
31 **telecommunications service that is paid for in advance and is sold in**
32 **predetermined units or dollars of which the number declines with use**
33 **in a known amount or expiration of time;**

34 (5) "Telecommunications company", any company doing business in this
35 state that provides **or resells wireless** telecommunications service;

36 (6) **"Wireless telecommunications service", [the same meaning]**
37 **commercial mobile radio service**, as such term is defined in [section 144.010]
38 **47 C.F.R. 20.3, as amended, including prepaid wireless**
39 **telecommunications service**. The term telephone company, as used in
40 sections 94.110, 94.270, and 94.360, shall [have the same meaning as] **include**
41 **a telecommunications company as defined in this section.**

92.080. Notwithstanding any provisions of this chapter or chapter 66, 80,
2 or 94, or the provisions of any municipal charter, after August 28, [2005] **2015**,
3 no municipality [may] **shall** impose any business license tax[, tower tax, or
4 antennae tax] on a telecommunications company except as specified in sections
5 [92.074] **92.077 to [92.095] 92.086.**

92.083. 1. On or after [July 1, 2006] **August 28, 2015**, if any city, county,
2 village, or town has imposed a business license tax on a telecommunications
3 company, as authorized in this chapter, or chapter 66, 80, or 94, or under the
4 authority granted in its charter, the terms used in such ordinance shall be
5 construed, for the purposes of sections [92.074] **92.077 to [92.095] 92.086**, to
6 have the meanings set forth in this section, regardless of any contrary definition
7 in the ordinance:

8 (1) "Gross receipts" [means], all receipts from the retail sale **by the**
9 **telecommunications company** of **wireless** telecommunications service taxable
10 under section 144.020 **to a purchaser of such service**, and **receipts** from any
11 retail customer **purchasing such service** now or hereafter exempt from the
12 state sales tax;

13 (2) ["Telephone service", "telecommunications service",
14 "telecommunications", "local exchange service", "local exchange telephone
15 transmission service", "exchange telephone service" or similar terms means
16 telecommunications service as defined in section 92.077] **"Retail sale", the sale**
17 **of wireless telecommunications service by a telecommunications**
18 **company for any purpose other than resale.**

19 2. Nothing in this section shall have the effect of repealing any existing
20 ordinance imposing a business license tax on a telecommunications company;
21 provided that a city with an ordinance in effect prior to August 28, [2005] **2015**,
22 complies with the provisions of [section 92.086] **sections 92.077 to 92.086.**

23 3. Any business license tax imposed on a telecommunications company
24 after [July 1, 2006] **August 28, 2015**, shall be imposed **only** on the retail sale
25 of **wireless** telecommunications service **to a purchaser of such service.**

26 4. **Nothing in sections 92.077 to 92.086 shall be construed to**
27 **modify or affect any court-approved settlement agreement between a**
28 **telecommunications company and a municipality entered into before**
29 **August 28, 2015, regarding the applicability of a business license tax to**
30 **such a company.**

92.086. 1. [On or before January 1, 2006, the director shall publish a list
2 of the municipalities which have, prior to August 28, 2005, enacted ordinances
3 imposing a business license tax on a telecommunications company. The list shall
4 contain:

- 5 (1) The name of the municipality imposing the tax;
- 6 (2) The name of the tax as denoted by the municipality;
- 7 (3) The citation to the municipal code provisions imposing the tax; and
- 8 (4) The percentage of gross receipts. The director shall not be required to
9 include any figures for the percentage of gross receipts if the municipality in
10 question at the time of August 28, 2005, had an ordinance which imposed a flat
11 fee instead of a fee based on gross receipts as its business license tax. In
12 compiling the list, the director shall collect information from telecommunications
13 companies, municipalities, municipal codes, and other reliable sources.

14 2. (1) On or before February 1, 2006, all telecommunications companies
15 in Missouri shall provide the director and the state auditor with the amount of
16 municipal business license tax which they paid each Missouri municipality
17 identified by the director in accordance with subsection 1 of this section for the
18 previous four quarters. On or before February 1, 2006, all telecommunications
19 companies in Missouri shall provide the director and the state auditor with an
20 itemized list establishing their gross receipts for the previous four quarters for
21 each category of gross receipts in each municipality identified by the director in
22 accordance with subsection 1 of this section upon which a sales tax is paid.

23 (2) On or before February 1, 2006, each municipality shall provide the
24 director and state auditor with the total amount of tax revenue collected for the
25 previous fiscal year of taxable gross receipts from telecommunications
26 companies. Any inconsistency or dispute arising from the information provided
27 by the municipalities and telecommunications companies shall be resolved
28 through an audit performed by the state auditor.

29 3. Beginning on July 1, 2006, the director shall henceforth collect,
30 administer, and distribute telecommunications business license tax revenues in
31 accordance with the provisions of sections 92.074 to 92.095.

32 4. Notwithstanding the provisions of any municipal business license tax
33 ordinance, effective July 1, 2006, all business license taxes shall be based solely
34 and exclusively on those gross receipts of telecommunications companies for the
35 retail sale of telecommunications services which are subject to taxation under
36 sections 144.010 and 144.020. Any provisions in any municipal taxing ordinances
37 which provide different definitions, rules, or provisions are expressly preempted
38 and are null and void.

39 5. The director is authorized to promulgate regulations to establish the
40 appropriate procedures for collecting, administering, and distributing such taxes.
41 A telecommunications company shall file a quarterly return with the director with
42 an attached schedule setting forth the total amount of taxable gross receipts for
43 the quarter and the amount of business license tax due to each municipality. The
44 director shall distribute the appropriate amounts, as set forth in this section, to
45 the municipalities. In exchange for its collection, administration, and distribution
46 functions, the department of revenue shall retain a collection fee of up to one
47 percent (not to exceed the actual costs incurred) on all funds collected and
48 distributed and shall be allowed to collect the interest off such funds during the
49 time between collection and distribution. In no event shall the director fail to

50 distribute the collected funds to a municipality more than thirty days after the
51 collection of the funds.

52 6. It is the intent of the general assembly that sections 92.074 to 92.095
53 comply with Article X, Section 22 of the Missouri Constitution, so that the
54 application of sections 92.074 to 92.095 shall have a revenue-neutral
55 effect. Because business license taxes shall now be based on the gross receipts
56 subject to the sales tax, it is anticipated that the base of the existing business
57 license taxes in most cases shall be broadened, so in order to comply with Article
58 X, Section 22 of the Missouri Constitution, the municipality shall adjust the gross
59 receipts percentage rate identified by the director in accordance with subsection
60 2 of this section so that the amount collectible, in total from all
61 telecommunications companies, excluding the collection fee authorized in
62 subsection 5 as defined herein, before and immediately after enactment remains
63 the same in each municipality. If the determination is made by a municipality
64 that in order to comply with Article X, Section 22 of the Missouri Constitution the
65 gross receipts percentage rate must be increased, such increase shall be passed
66 by a majority vote of the qualified voters voting in that municipality. The
67 existing tax base shall be an amount equal to the total amount of
68 telecommunications business license taxes collected by a municipality for fiscal
69 year 2005, increased by fifty percent of the difference between such amount and
70 the business license tax receipts that would have been yielded by applying the
71 gross receipts percentage rate identified in accordance with subsection 1 of this
72 section to the total gross receipts for all wireless telecommunications services
73 provided by telecommunications companies as identified in 47 U.S.C. Section
74 332(D)(1) and 47 C.F.R. Parts 22 or 24 in such fiscal year attributable to the
75 municipality. Based upon the rate information received from the director under
76 this section, each municipality shall, no later than April 1, 2006, promulgate and
77 publish the revenue-neutral rates to be applied in each municipality. Such tax
78 rates shall be the applicable business license tax rate for bills rendered on or
79 after July 1, 2006. Any percentages in any ordinance that are contrary to that
80 established by the municipality herein are null and void. If any municipal
81 business license tax ordinance as of January 1, 2005, had a provision stating that
82 the tax only applied to business customers, the new calculated rate under this
83 section also shall be determined based only on business customers and shall
84 apply only to business customers.

85 7. On or before April 1, 2007, the director, in consultation with the state

86 auditor and municipalities, shall examine revenues collected and forecast whether
87 a shortfall or excess in municipal revenues for each municipality is likely to occur
88 for the fiscal year ending June 30, 2007, due to data reporting errors or other
89 errors in the calculation of the revenue-neutral tax rate. Section 32.057 shall not
90 restrict the disclosure of information to perform such consultation. If a shortfall
91 or excess is expected, the director, after review and comment from municipalities
92 and telecommunications companies, shall promulgate and publish an adjustment
93 in the rate in such municipalities. Such tax rate adjustment, if necessary, shall
94 apply to bills issued after July 1, 2007.

95 8. The director shall be notified in writing within thirty days of any
96 change in the municipal business license tax rate adopted by a municipality. The
97 director shall promulgate such rate changes, but such rate changes may only take
98 effect on the first day of a calendar quarter and only after a minimum of ninety
99 days notice from the director to a telecommunications company. Any subsequent
100 increase in the business license tax rate passed through an ordinance by a
101 municipality which is above that rate as established by the municipality under
102 subsection 6 of this section shall be passed by a majority vote of the qualified
103 voters voting in that municipality. No municipal tax rate shall exceed the cap
104 provided in subsection 9 of this section.

105 9. Notwithstanding the provisions of subsections 3 to 8 of this section or
106 any other provision of law to the contrary, for any municipality not subject to the
107 provisions of subsection 10 of this section, the maximum rate of taxation on gross
108 receipts shall not exceed five percent for bills rendered on or after July 1, 2006,
109 except if the business license tax rate for any municipality, as calculated in
110 subsection 6 of this section, or if necessary, subsection 7 of this section, is
111 determined to be greater than five percent, then, notwithstanding the provisions
112 of such subsections, the business license tax rates for such municipality on and
113 after July 1, 2006, shall be as follows:

114 (1) For bills rendered between July 1, 2006, and June 30, 2008, the rate
115 shall be the actual adjusted rate as determined by subsection 6 of this section, or,
116 if necessary, subsection 7 of this section;

117 (2) For bills rendered between July 1, 2008, and June 30, 2010, the rate
118 shall be half the sum of the rate determined in subdivision (1) of this subsection
119 and five percent; and

120 (3) For all bills rendered on and after July 1, 2010, five percent.

121 10. (1) Any municipality which prior to November 4, 1980, had an

122 ordinance imposing a business license tax on telecommunications companies
123 which specifically included the words "wireless", "cell phones", or "mobile phones"
124 in its business license tax ordinance as revenues upon which a business license
125 tax could be imposed, and had not limited its tax to local exchange telephone
126 service or landlines, and had taken affirmative action to collect such tax from
127 wireless telecommunications providers prior to January 15, 2005, shall not be
128 required to adjust its business license tax rate as provided in subsection 6 of this
129 section and shall not be subject to the provisions of subsection 9 of this section.

130 (2) Any municipality which has an ordinance or an amendment to an
131 ordinance imposing a business license tax on telecommunications companies
132 which was authorized or amended by a public vote subsequent to November 4,
133 1980, and such authorization specifically included the terms "wireless", "cell
134 phones", or "mobile telephones" as revenues upon which a business license tax
135 could be imposed, and had not limited its tax to local exchange telephone service
136 or landlines, and had taken affirmative action to collect such tax from wireless
137 telecommunications providers prior to January 15, 2005, shall not be required to
138 adjust its business license tax rate as provided in subsection 6 of this section and
139 shall not be subject to the provisions of subsection 9 of this section.

140 11. For purposes of sections 92.074 to 92.095, the director and any
141 municipality shall have the authority to audit any telecommunications
142 company. Notwithstanding the provisions of section 32.057, the director of
143 revenue shall furnish any municipality with information it requests to permit the
144 municipality to review and audit the payments of any telecommunications
145 company.

146 12. The statute of limitations shall be three years for the alleged
147 nonpayment or underpayment of the business license tax.

148 13.] Any telecommunications company is authorized to pass through to its
149 retail customers all or part of the business license tax.

150 [14.] 2. The provisions of [subsection 5 of section 144.190 and]
151 subdivision (3) of subsection 12 of section 32.087 shall apply to the tax imposed
152 under sections [92.074] **92.077** to [92.095].

153 15. Unless specifically stated otherwise in sections 92.074 to 92.095,
154 taxpayer remedies, enforcement mechanisms, tax refunds, tax protests,
155 assessments, and all other procedures shall be the same as those provided in
156 chapter 144.

157 16. Any rule or portion of a rule, as that term is defined in section

158 536.010, that is created under the authority delegated in this section shall
159 become effective only if it complies with and is subject to all of the provisions of
160 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are
161 nonseverable and if any of the powers vested with the general assembly pursuant
162 to chapter 536 to review, to delay the effective date, or to disapprove and annul
163 a rule are subsequently held unconstitutional, then the grant of rulemaking
164 authority and any rule proposed or adopted after August 28, 2005, shall be
165 invalid and void]

92.086, provided that, with respect to prepaid wireless telecommunications service, the business license tax shall apply only to retail sales that are deemed to occur in the municipality as follows:

168 (1) The retail sale is effected in person by the purchaser at a
169 business location of the telecommunications company if that business
170 location is in the municipality; or

171 (2) The prepaid wireless telecommunications service is
172 physically delivered to a purchaser at an address in the municipality
173 provided to the telecommunications company; or

174 (3) The telecommunications company's records that are
175 maintained in the regular course of business indicate that the
176 purchaser's address is in the municipality and the records are not kept
177 or made in bad faith; or

178 (4) The purchaser gives an address in the municipality during
179 the consummation of the retail sale, including the purchaser's payment
180 instrument if no other address is available, and the address is not given
181 in bad faith; or

182 (5) The purchaser's mobile telephone number is associated with
183 a location in the municipality, if no other location or address
184 information is available.

[92.074. Sections 92.074 to 92.095 shall be known as the
2 "Municipal Telecommunications Business License Tax
3 Simplification Act".]

[92.089. 1. The general assembly finds and declares it to
2 be the policy of the state of Missouri that costly litigation which
3 have or may be filed by Missouri municipalities against
4 telecommunications companies, concerning the application of
5 certain business license taxes to certain telecommunications
6 companies, and to certain revenues of those telecommunications

companies, as set forth below, is detrimental to the economic well being of the state, and the claims of the municipal governments regarding such business licenses have neither been determined to be valid nor liquidated. The general assembly further finds and declares that the resolution of such uncertain litigation, the uniformity, and the administrative convenience and cost savings to municipalities resulting from, and the revenues which will or may accrue to municipalities in the future as a result of the enactment of sections 92.074 to 92.095 are full and adequate consideration to municipalities, as the term "consideration" is used in Article III, Section 39(5) of the Missouri Constitution, for the immunity and dismissal of lawsuits outlined in subsection 2 of this section.

2. In the event any telecommunications company, prior to July 1, 2006, failed to pay any amount to a municipality based on a subjective good faith belief that either:

(1) It was not a telephone company covered by the municipal business license tax ordinance, or the statute authorizing the enactment of such taxing ordinance, or did not provide telephone service as stated in the business license tax ordinance, and therefore owed no business license tax to the municipality; or

(2) That certain categories of its revenues did not qualify under the definition or wording of the ordinance as gross receipts or revenues upon which business license taxes should be calculated; such a telecommunications company is entitled to full immunity from, and shall not be liable to a municipality for, the payment of the disputed amounts of business license taxes, up to and including July 1, 2006. However, such immunity and release from liability shall not apply to any business license tax imposed in accordance with subdivisions (1) and (2) of subsection 10 of section 92.086 or sections 92.074 to 92.095 after July 1, 2006. If any municipality, prior to July 1, 2006, has brought litigation or caused an audit of back taxes for the nonpayment by a telecommunications company of municipal business license taxes, it shall immediately dismiss such lawsuit without prejudice and shall cease and desist from continuing any audit, except those

43 cities described in subsection 10 of section 92.086.]

2 [92.092. All provisions of sections 92.074 to 92.089 are so
3 essentially and inseparably connected with, and so dependent
4 upon, each other that no such provision would be enacted without
5 all others. If a court of competent jurisdiction enters a final
6 judgment on the merits that is not subject to appeal and that
7 declares any provision or part of sections 92.074 to 92.089
8 unconstitutional or unenforceable then sections 92.074 to 92.089,
9 in their collective entirety, are invalid and shall have no legal
10 effect as of the date of such judgment. In such event, both
11 telecommunications companies and municipalities shall have the
12 same rights as existed before August 28, 2005, but shall not be
13 entitled to reimbursement, or required to pay reimbursement, for
14 any sums paid in the good faith belief in the validity and
constitutionality of sections 92.074 to 92.089.]

✓
Bill

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